

(16)

IN THE
Supreme Court of the United States

October Term, 1942.

No. 1038

OSKAR TIEDEMANN and ESTONIAN STATE STEAMSHIP LINE,
Petitioners,
vs.

ESTODURAS STEAMSHIP COMPANY, INC., Claimant of the
Steamship "FLORIDA" (formerly the "SIGNE").

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

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Index to Petition for Writ

	PAGE
JURISDICTION	1
SUMMARY STATEMENT OF MATTER INVOLVED	2
STATEMENT PARTICULARLY DISCLOSING THE BASIS UPON WHICH IT IS CONTENDED THAT THIS COURT HAS JURIS- DICTION TO REVIEW THE JUDGMENT IN QUESTION	6
CERTIFICATE	9

Index to the Brief

POINT I—The decision is in direct conflict with that of the Circuit Court of Appeals of the Third Circuit in the case of <i>The Denny</i> , 127 Fed. 2d 404 (1942)	11
POINT II—The decision of the Court below departs from the accepted and usual course of judicial pro- ceedings by establishing judicial review in United States Courts of the acts of a <i>de facto</i> foreign gov- ernment affecting only personal and property rights of its own citizens	13
POINT III—The decision of the Court below is in conflict with applicable decisions of this Court which hold that the civil decrees of a <i>de facto</i> government affect- ing personal and property rights are effective re- gardless of political recognition or non-recognition of such government	14
POINT IV—The Court below has wrongfully decided an important question of Federal Law which has not been decided by this Court in its refusal to grant	

letters rogatory for the procurement of relevant testimony abroad as requested by libelants.....	18
POINT V—The decision of the Court below is in conflict with an applicable decision of this Court in so far as it allows the consul of a foreign government, in the absence of specific powers given to him by competent authority, to receive the proceeds of property belonging to his nationals.....	19
POINT VI—The decision of the Court below in allowing an adverse party to retain possession of the FLORIDA "in trust" has clearly departed from the accepted and usual course of judicial proceedings by allowing an adverse claimant to act as trustee for a reversionary interest	20
POINT VII—The finding of the Court below that libellant Tiedemann signed his power of attorney in this case under duress is unsupported by any legally admissible evidence whatsoever	24
POINT VIII—The Court erred in stating that "the record lacks clear and convincing proof of ownership by libelants * * *.".....	25
POINT IX—The Court below has decided an important question of Federal Law which must ultimately be decided by this Court in the matter of treatment to be given to the acts and decrees of the Baltic States of the Soviet Union subsequent to June 17, 1940.	25
CONCLUSION—For the reasons above stated, therefore, libellant respectfully urges that the petition for certiorari in the instant case should be granted.....	28

CITATIONS

	PAGE
Am. Journal of Intn'l Law, April, 1925, Vol. XIX, No. 2 (pp. 267, 268)	16
Anderson v. N. V. Transandine, etc., 299 N. Y. 9, 43 N. E. 2d 502 (1942)	27
Archiv des Offentlichen Rechts	26
Baldy v. Hunter, 171 U. S. 388 (1898)	15
Bello Corrunes, 19 U. S. (6 Wheat) 152 (1821)	20
Edwin M. Borchard, 26 Amer. Journal of International Law (1932)	16
Louis Connick, 34 Yale Law Journal, 499 (1925)	16
The Denny, 127 Fed. (2d) 404 (1942), C. C. A. 3rd (1942)	6
Dean Edward D. Dickinson of the University of California Law School, writing in 22 Mich. Law Review 29 (1923)	16
Encyclopedia Britannica, Estonia, 1942 Edition	26
Ford v. Surget, 97 U. S. 594 (1878)	15
Osmond Fraenkel, 25 Columbia Law Review 544 (1925)	16
Keith v. Clark, 97 U. S. 454 (1878)	15
MacLeod v. U. S., 229 U. S. 416, 33 Supreme Court 955 (1913)	16
Mauran v. Insurance Company, 73 U. S. 1 (1867)	15
May v. May, 167 U. S. 310 (1897)	22
In re: National Equipment Company, 195 Fed. 488, 115 C. C. A. 398, Cert. Den. 225 U. S. 701	19
Oetjen v. Central Leather Company, 246 U. S. 297 (1918)	21
Pravda—February 10, 1943	21
Salimoff & Company v. Standard Oil Company, 262 N. Y. 220, 186 N. E. 679 (1933)	17
Sprott v. U. S., 87 U. S. 459 (1874)	15

The Soviet Union, Finland and the Baltic States, published in 1941 by the Soviet Information Bureau	26
Sunday School Union, etc. v. Walden, 121 Fed. 2d 719 (1941)	23
In re: Tempest (1866) 1 Chan. App. 485, 35 L. J. Chan. 632, 14 Law Times 688	22
Texas v. White, 74 U. S. 700 (1869)	15
Thorington v. Smith, 75 U. S. (8 Wall) 1 (1868)	15
U. S. v. Belmont, 301 U. S. 324 (1937)	13, 16
U. S. v. Hoffmann, 24 Fed. Supp. 847 (1938)	19
U. S. v. The Insurance Companies, 89 U. S. 99 (1875) ..	15
U. S. v. Pink, 315 U. S. 203 (1942)	14, 16
U. S. v. Rice, 17 U. S. (4 Wheat) 246 (1819)	15
U. S. v. Thomas, 82 U. S. (15 Wall) 337 (1872)	15
Williams v. Bruffy, 96 U. S. 176 (1867)	15
Wilson v. Wilson, 145 Mass. 490 (1888)	22
Wulfsohn v. Russian Republic, 234 N. Y. 372 (1923)...	17

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

*To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States:*

The petition of Oskar Tiedemann and Estonian State Steamship Line, petitioners, prays that a writ of certiorari issue to the Circuit Court of Appeals for the Fifth Circuit in the above entitled action, and respectfully shows:

Jurisdiction

This is a suit in admiralty brought by your petitioners as libelants in the United States District Court for the Eastern District of Louisiana, New Orleans Division.

Libelants seek possession of an Estonian ship, the **SIGNE** (renamed the **FLORIDA**) which was subjected to decrees of Estonia S.S.R. in July and October 1940 nationalizing the Merchant Fleet of that country. Libelants claim under such decrees. The libels were dismissed by the Court below. This petition seeks a review of the decision in the Circuit Court of Appeals for the Fifth Circuit dismissing such libels (opinion filed and judgment entered on February 20th, 1943, Case No. 10288, printed in 133, Fed. 2d 719).

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code as amended (28 U. S. Code 347) and the rules of this Court made pursuant thereto.

A

Summary Statement of the Matter Involved

For almost 900 years, until March 1918, Estonia was a province of Russia. In March 1918, by the Treaty of Brest-Litovsk, Estonia was dismembered from its parent Russia by the Germans. Thereafter the so-called Estonian Republics fell consistently under the influence of Germany, and, after Hitler came to power in 1933, Estonia obediently followed the Nazi pattern by abolishing political parties in 1935. On June 17th, 1940, the brief existence of the Russian Province of Estonia as an independent state came to an end. On that date Estonia was reoccupied by the Russian Army. After its restoration to the mother country on June 17th, 1940, Estonia became again a State of Russia, known as the Estonian Soviet Socialist Republic, herein referred to as Estonia S.S.R.

Under decrees of Estonia S.S.R. dated July 28th and October 8th, 1940, the Merchant Fleet of Estonia was nationalized and compensation was ordered to the former owners¹.

Estonia S.S.R. was the *de facto* government of Estonia at all times subsequent to June 17, 1940, and relevant to this proceeding.²

The intervening libelant herein, Estonian State Steamship Line is a corporation of the U. S. S. R. organized on October 25, 1940, to take title to the S. S. FLORIDA, among other ships, pursuant to decrees of the *de facto* Estonian government as above³.

¹ Respondent's Exhibits "7", Rec., p. 308; "6", Rec., p. 305; "5", Rec., p. 300; Libelants' Exhibits "A", Rec., p. 254; "B", Rec., p. 255; "C", Rec., p. 258; "D", Rec., p. 263 and "E", Rec., p. 267, the last exhibit being an excerpt from Article 111⁷ of the Constitution of the Estonian S. S. R. which decrees that "Water * * * transport * * * are state property, that is belong to the whole people"). Libelants' Ex. "A", Par. 2, Rec., p. 255).

The ship here involved is one of those affected by such decrees.

² Conceded by respondent Estoduras in its answer, Pars. 11, 12, 13 and 22, Rec., p. 27, and in its answer to the intervening libel, Pars. 6, 7 and 8, Rec., pp. 56 and 57; and found as a fact by the Court below; Findings of Fact, Pars. 2, 3 and 5, Rec., p. 377, from which findings no appeal was taken.

³ Decree dated October 25, 1940 of the Council of People's Commissars of the U. S. S. R. No. 2131, and further decree of October 28, 1940, by the People's Commissariat of the U. S. S. R. Maritime Fleet, Rec., pp. 255, 258 and 263 and Libelants' Exhibit "A", Rec., p. 254.

The State Department of the United States did not politically recognize the occupation of Estonia by the U. S. S. R. The U. S. S. R., however, and Estonia S.S.R. undeniably constituted the *de facto* government of Estonia during the period relevant to this case (June 17th to October 25th, 1940)⁴.

The Master of the ship in this case, on the advice of respondent Kaiv, who had been consul in the United States of the extinguished Estonian government, refused to surrender this ship to libelants who took title under the Estonian S.S.R. decrees of July 28th and October 8th, 1940.

This libel was thereupon brought by libelant and intervening libelant under a power of attorney given by both to Charles Recht. The original libelant was Oskar Tiedemann, managing director of the FLORIDA prior to the decrees of July 28th and October 8th, 1940, as above⁵.

Intervening libel was filed on behalf of the Estonian State Steamship Line, a corporation of the U. S. S. R. under power of attorney to the same Charles Recht for the same purpose on behalf of the Estonian State Steamship Line

⁴ Conceded by respondent Estoduras in its answer, Pars. 11, 12, 13 and 22, Rec., p. 27, and in its answer to the intervening libel, Pars. 6, 7, and 8, Rec., pp. 56 and 57; and found as a fact by the Court below; Findings of Fact, Pars. 2, 3 and 5, Rec., p. 377, from which findings no appeal was taken.

⁵ Libelants' Exhibit "R", Rec., p. 269, and radiogram of December 18th, 1940 confirmed by radiogram of June 7th, 1941, Libelants' Exhibit "T", signature of Tiedemann notarized, Rec., p. 271.

which took title under the decrees above referred to of the *de facto* Estonian government⁶.

The Tiedemann libel was filed in the United States District Court for the Eastern District of Louisiana, New Orleans Division, December 21, 1940,⁷ and the intervening libel of Estonian State Steamship Line was filed on June 12, 1941⁸. Libelants seek their remedy *in personam* for damages as well as *in rem*⁹.

The pre-1940 government of Estonia has not been a *de facto* government nor even a government in exile since June 17, 1940.

The respondent, Estoduras Steamship Company, Inc. is a dummy corporation representing no investment of capital and holding no assets, except the ship here involved. It was organized by respondent Kaiv¹⁰ and the registry of this ship has been changed to Panama by him. Kaiv was Counsel General in the United States of the Estonian Government extinguished on June 17, 1940. This government has had no existence since that time, being neither a *de facto* government nor a government in exile.

⁶ Libelants' Exhibit "F", Rec., p. 268. This power of attorney to Charles Recht authorizing him to file libel on behalf of Estonian State Steamship Line, has been confirmed by written document authenticated by the United States Consulate at Moscow, under date of March 11th, 1941, and added to the record by stipulation after the record was printed. This document is in the file of the case.

⁷ Rec., p. 2.

⁸ Rec., p. 52.

⁹ Rec., p. 5, Sec. IX of libel, paragraph 4.

¹⁰ Rec., pp. 236 to 241.

The trial of this action was had before Hon. A. J. Caillouet on June 26th and June 27th, 1941. The libel was dismissed.

Findings of fact and conclusions of law were made on July 22nd, 1941, and a decree dismissing the libel was entered on July 30th, 1941. An appeal was taken to the United States Circuit Court of Appeals for the Fifth Circuit and the Judgment of the District Court was affirmed [133 Fed. 2d 719—(1943)].

B

Statement Particularly Disclosing the Basis Upon Which it is Contended That This Court Has Jurisdiction to Review the Judgment in Question, and the Questions Presented.

Libelant-appellant urges that the Circuit Court of Appeals erred:

1. Because the decision below is in direct conflict with the decision of the Circuit Court of Appeals of the Third Circuit in the same matter in the case of *The Denny*, 127 Fed. (2d) 404 (1942). In that case the Circuit Court of Appeals of the Third Circuit, on a state of facts legally identical with the instant case, but involving a Lithuanian ship, upheld in full libelant's claim to such ship, whereas this Court dismisses such libel.

2. Because the decision of the Court below departs from the accepted and usual course of judicial proceedings by establishing judicial review in United States Courts of the decrees of a *de facto* foreign government affecting only the personal and property rights of its own citizens.

3. Because the decision of the Court below is in conflict with all applicable decisions of this Court which hold that the civil decrees of a *de facto* government affecting personal and property rights are effective regardless of the political recognition or non-recognition of such *de facto* government.

4. Because the Court below has decided an important question of Federal Law which has not been, but should be, decided by this Court, in its refusal to grant letters rogatory for the procurement of relevant testimony abroad as requested by the libelants. The United States has a compact with the Soviet Union providing for the taking of such testimony under such circumstances. Libelants contend that they possess a Constitutional right under the Fifth Amendment for the procurement of such testimony, and assert that this important question of Federal Law has not been settled by this Court.

5. Because the decision of the Court below is in conflict with an applicable decision of this Court insofar as it allows the consul of a foreign government, in the absence of specific powers given to him by competent authority, to receive the proceeds of property belonging to his nationals.

6. Because the decision of the Court below, in allowing respondent Kaiv to retain possession of the FLORIDA "in trust" has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. Respondent Kaiv is an adverse claimant of the ship and is, therefore, disqualified from serving as trustee thereof under deci-

sions of this Court and under the uniformly established practice of courts of equity for almost one hundred years.

7. Because the decision of the Court below has found that libelant Tiedemann signed his power of attorney in this case under duress, though there is nowhere in the record any legally admissible evidence whatsoever of such duress. The decision below so far departs from accepted and usual course of judicial proceedings, therefore, as to call for an exercise of this Court's power of supervision.

8. Because the Court below is in error in stating that "the record lacks clear and convincing proof of ownership by libelants * * *." The absolute proof of ownership of this ship in libelants was contained in the record in a series of decrees and orders heretofore cited in the state of facts. The Court below has so far departed, therefore, in this respect from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

9. Because the judicial treatment to be accorded the decrees of the Baltic States of the Soviet Union from and after June 17th, 1940, to date, involves a most important question of Federal Law which has not been, but should be, settled by this Court.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, in case No. 10288 (133 Fed. 2d 719), commanding that Court to certify and to send to this Court for its review and determination, on

a day certain, to be therein named, a full and complete transcript of the record and all proceedings in the case of Oskar Tiedemann and Estonian State Steamship Line, appellants, against Estoduras Steamship Company, Inc., claimant of the Steamship FLORIDA (formerly the SIGNE), appellee, and that the said judgment of the United States Circuit Court of Appeals for the Fifth Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises, as this Honorable Court may seem meet and just.

And your Petitioner will ever pray.

Dated, New York, N. Y., May 17, 1943.

OSKAR TIEDEMANN
and
ESTONIAN STATE STEAMSHIP LINE,
Petitioners.

By CHARLES RECHT,
Counsel.

Certificate

I hereby certify that I have examined the foregoing petition and that in my opinion it is well founded and entitled to the favorable consideration of this Court and that it is not filed for purposes of delay.

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